

Article 109-6

The sale of goods, in a manner which constitutes an abuse of fair, well-recognised and established commercial practises, shall be subject to paragraph 3 of article 1382 of the Civil Code.

Article 109-7

1. An unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods or by giving reasonable notice of his claim to the carrier or other intermediary in whose possession the goods are. Such carrier or intermediary shall be bound to re-deliver the goods to the seller who shall bear the cost of such re-delivery. Subject to paragraph 2 of this article. This rule shall apply notwithstanding any rule arising out of the passing of the ownership of goods by the contract.

2. The unpaid seller's right to recover goods in transitu shall not be affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. Provided that where a document of title has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for value, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of retention or stoppage in transitu is defeated. If such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of retention or stoppage in transitu can only be exercised subject to the rights of the transferee.

TITLE VIII - BILLS OF EXCHANGE, PROMISSORY NOTES AND PRESCRIPTION

SECTION I

Repealed.

Bills of Exchange Act.

TITLE IX - ARBITRATION

Article 110

1. Any dispute which has arisen or may arise out of a specific legal relationship, and in respect of which it is permissible to resort to arbitration, may be subject to an arbitration agreement. Subject to articles 2044 to 2058 of the Civil Code relating to compromise.

2. An arbitration agreement may be annulled for fraud or duress.

3. The parties to an arbitration agreement may agree to forgo arbitration and submit to the jurisdiction of the Court. The submission by both parties to such jurisdiction shall be deemed to amount to the tacit renunciation of the arbitration agreement.

4. If an agreement containing an arbitration clause is judicially declared to be void, the arbitration clause therein shall also be void. However, an arbitration clause in an international agreement shall not be ipso facto void by reason only of the invalidity of such agreement.

5. Notwithstanding any rule in this article, when an Act specifically excludes arbitration in any specific agreement or dispute, such exclusion shall have effect. A term in a contract excluding arbitration under paragraph 2 of article 1148 of the Civil Code shall be null. Nothing in this article shall be construed as affecting arbitration as provided by the Civil Code.

Article 111

1. An arbitration agreement shall be constituted by an instrument in writing signed by the parties or by other documents binding on the parties and showing their intention to have recourse to arbitration.
2. If, in an arbitration agreement, the parties have referred to a particular arbitration procedure, that procedure shall be deemed to be included in the agreement.

Article 112

An arbitration agreement shall not be valid if it gives one of the parties thereto a privileged position with regard to the appointment of the arbitrator or arbitrators.

Article 113

1. The Court seized of a dispute which is the subject of an arbitration agreement shall, at the request of either party, declare that it has no jurisdiction, unless, insofar as the dispute is concerned, the agreement is not valid or has terminated.
2. An application to the Court for preservation or interim measures shall not be incompatible with an arbitration agreement and shall not imply a renunciation of such agreement.

Article 114

1. The arbitral tribunal shall be composed of an uneven number of arbitrators. However, a sole arbitrator may be appointed. Arbitrators must formally accept the appointment. Aliens shall not be excluded from being arbitrators.
2. If the arbitration agreement provides for an even number of arbitrators, an additional arbitrator shall be appointed.
3. If the parties have not settled the number of arbitrators in the arbitration agreement and do not agree on the number, the arbitral tribunal shall be composed of three arbitrators.

Article 115

The parties may, either in the arbitration agreement or subsequently thereto, appoint the sole arbitrator or the arbitrators or entrust the appointment thereof to a third party. If the parties have not appointed the arbitrators and have not agreed on a method of appointment, each party shall, when the dispute arises, appoint an arbitrator, or an equal number of arbitrators, as the case may be.

Article 116

1. The party who intends to bring a dispute before an arbitral tribunal shall give notice to the other party. The notice shall refer to the arbitration agreement and specify the subject-matter of the dispute, unless the arbitration agreement already does so.
2. If there is more than one arbitrator, and if the parties are entitled to appoint the same, the notice shall specify the arbitrator or arbitrators appointed by the party invoking the arbitration agreement; the other party shall be invited, in the notice, to appoint the arbitrator or arbitrators whom he is entitled to appoint.
3. If a third person has been entrusted with the appointment of a sole arbitrator or arbitrators and has not done so, he also shall be given notice in accordance with paragraph 1 and shall be invited to make such appointment.
4. The appointment of an arbitrator may not be withdrawn after notification of the appointment.

Article 117

1. If the party or third person to whom notice has been given in accordance with article 116 has not, within a period of one month from the notice, appointed the arbitrator or arbitrators whom the party or third person is entitled to appoint, the Court shall make the nomination at the request of either party.
2. If the parties have agreed that there shall be a sole arbitrator and they have not appointed him by mutual consent within a period of one month from the notice under article 116, the Court shall make the nomination at the request of either party.

Article 118

1. Where the arbitrators appointed or nominated in accordance with the foregoing provisions are even in number, they shall nominate another arbitrator who shall be president of the arbitral tribunal. If they do not agree, or if the parties have not provided otherwise, the Court shall make the necessary nomination at the request of either party. The Court may be seized after the expiration of a period of one month from the acceptance of his office by the last arbitrator or as soon as the failure to agree is established.
2. Where the arbitrators appointed are uneven in number they shall nominate one of themselves to be president of the arbitral tribunal, unless the parties have agreed on another method of appointment. If the arbitrators do not agree, the Court seized under paragraph 1 shall make the necessary nomination.

Article 119

1. If an arbitrator dies or cannot, by reason of some incapacity, legal or physical perform the functions of his office, or if he refuses to accept it or does not carry it out, or if his office is terminated by the mutual agreement of the parties, he shall be replaced in accordance with the rules governing his appointment or nomination. However, if the arbitrator or arbitrators are named in the arbitration agreement, the agreement shall terminate ipso jure.

2. A disagreement arising out of any case envisaged in paragraph 1 shall be brought before the Court on the application of one of the parties. If the Court decides that there are grounds for replacing the arbitrator, it shall nominate his successor, taking into account the intention of the parties, as it appears from the arbitration agreement.

3. The parties may derogate from the provisions of this article.

Article 120

Unless the parties have agreed otherwise, neither the arbitration agreement nor the office of arbitrator shall be terminated by the death of one of the parties.

Article 121

1. Arbitrators may be challenged on the same grounds as judges.

2. A party may not challenge an arbitrator appointed by him except on a ground of which the party has become aware after the appointment.

Article 122

1. The challenge shall, as soon as the challenger becomes aware of the ground of challenge, be brought to the notice of the arbitrators and, where applicable, of the third person who has, in pursuance of the arbitration agreement, appointed the arbitrator challenged. The arbitrators shall thereupon suspend further proceedings.

2. If within a period of ten days of the notice of the challenge being given to him, the arbitrator challenged has not resigned, the arbitral tribunal shall so notify the challenger. The challenger shall, on pain of being barred, bring the matter before the Court within a period of ten days from receiving such notification. Otherwise, the proceedings before the arbitrators shall be resumed ipso jure.

3. If the arbitrator resigns or if the challenge is upheld by the Court, the arbitrator shall be replaced in accordance with the rules governing his appointment or nomination.

However, if he has been named in the arbitration agreement, the agreement shall terminate ipso jure. The parties may derogate from the provisions of this paragraph.

Article 123

1. The parties may in the arbitration agreement exclude certain categories of persons from being arbitrators.

2. If such an exclusion has been disregarded with respect of the composition of the arbitral tribunal, the irregularity shall be invoked in accordance with the provisions of article 122.

Article 124

1. Without prejudice to the provisions of article 125, the parties may decide on the rules of the arbitral procedure and on the place of arbitration. If the parties do not indicate their intention

before the first arbitrator has accepted his office, the decision shall be a matter for the arbitrators.

2. The president of the arbitral tribunal shall regulate the hearings and conduct the proceedings.

Article 125

1. The arbitral tribunal shall give to each party an opportunity of presenting his case and of substantiating his claims.

2. The arbitral tribunal shall make an award after an oral hearing. The parties may validly be summoned by registered letter, unless they have agreed upon any other method of summons. The parties may appear in person.

3. The procedure shall be in writing where the parties have so provided or where an oral hearing has been waived.

4. Each party shall have the right to be represented by an attorney or by a duly accredited representative. Each party may be assisted by any person of his choice.

Article 126

If, without legitimate cause, a party properly summoned does not appear or does not present his case within period fixed, the arbitral tribunal may, unless the other party requests an adjournment, investigate the matter in dispute and make an award.

Article 127

1. The arbitral tribunal may rule in respect of its own jurisdiction and, to this effect, it may examine the validity of the arbitration agreement.

2. A ruling that the contract is invalid shall not entail ipso jure the nullity of the arbitration agreement contained therein.

3. The ruling of the arbitral tribunal to the effect that it has jurisdiction may not be contested before the court except at the same time as the award on the main issue and by the same procedure. The Court may, at the request of one of the parties, decide whether a ruling that the arbitral tribunal has no jurisdiction is well founded.

4. The appointment of an arbitrator by a party shall not deprive that party of his rights to challenge the jurisdiction of the arbitral tribunal.

Article 128

1. The parties may, up to the time of acceptance of office by the first arbitrator, settle the period within which the award is to be made or provide for a method according to which the period is to be settled.

2. If the parties have not prescribed a period or a method of prescribing a period, or if the arbitral tribunal delays in making the award and if a period of six months has elapsed from the date on which all the arbitrators accepted office in respect of the dispute submitted to arbitration, the

Court may, at the request of one of the parties, stipulate a period for the arbitral tribunal.

3. The office of arbitrator shall terminate if the award is not made within the relevant period unless that period is extended by agreement between the parties.

4. Where arbitrators are named in the arbitration agreement and the award is not made within the relevant period, the arbitration agreement shall terminate ipso jure, unless the parties have agreed otherwise.

Article 129

Except where otherwise stipulated, an arbitral tribunal may make a final award in the form of one or more awards.

Article 130

Except where otherwise stipulated, arbitrators shall make their awards in accordance with the rules of law.

Article 131

1. An award shall be made after a deliberation in which all the arbitrators shall take part. The award shall be made by an absolute majority of votes unless the parties have agreed on another majority.

2. The parties may also agree that, when a majority cannot be obtained, the president of the arbitral tribunal shall have a casting vote.

3. Except where otherwise stipulated, if the arbitrators are to award a sum of money, and a majority cannot be obtained for any particular sum, the votes for the highest sum shall be counted as votes for the next highest sum until a majority is obtained.

4. An award shall be set down in writing and signed by the arbitrators. If one or more of the arbitrators are unable or unwilling to sign, the fact shall be recorded in the award. However, the award shall bear a number of signatures which is at least equal to a majority of the arbitrators.

5. An award shall, in addition to the operative part, contain the following particulars:

(a) the names and permanent addresses of the arbitrators;

(b) the names and permanent addresses of the parties;

(c) the subject-matter of the dispute;

(d) the date on which the award was made;

(e) the place of arbitration and the place where the award was made.

6. The reasons for an award shall be stated, unless the parties have by agreement released the arbitrators from this obligation.

Article 132

1. The president of the arbitral tribunal shall give notice to each party of the award by sending to each of such parties a copy thereof signed in accordance with paragraph 4 of

Article 131.

2. The president of the arbitral tribunal shall deposit the original of the award with the registry of the Supreme Court having jurisdiction; he shall inform the parties of the deposit thereof.

Note: The inclusion of a second (disordered) article 131 reflects the official 1994 edition.

Article 133

Unless the award is contrary to public policy or the dispute was not capable of settlement by arbitration, an arbitral award shall have the authority of res judicata when it has been notified in accordance with paragraph 1 of article 132 and may no longer be contested before arbitrators.

Article 134

1. An arbitral award may be attacked before a Court only by way of an application to set aside and may be set aside only in the cases mentioned in this article.

2. An arbitral award may be set aside:

- (a) if it is contrary to public policy;
- (b) if the dispute was not capable of settlement by arbitration;
- (c) if there is no valid arbitration agreement;
- (d) if the arbitral tribunal has exceeded its jurisdiction or its powers;
- (e) if the arbitral tribunal has omitted to make an award in respect of one or more points of the dispute and if the points omitted cannot be separated from the points in respect of which an award has been made;
- (f) if the award was made by an arbitral tribunal irregularly constituted;
- (g) if the parties have not been given an opportunity of presenting their case, and of substantiating their claims, or if there has been disregard of any other obligatory rule of the arbitral procedure, insofar as such disregard has had an influence on the arbitral award;
- (h) if the formalities prescribed in paragraph 4 of article 131 have not been fulfilled;
- (i) if the reasons for the award have not been stated;
- (j) if the award contains conflicting provisions.

3. An award may also be set aside:

- (a) if it was obtained by fraud;
- (b) if it is based on evidence that has been declared false by a judicial decision having the force of res judicata or on evidence recognised as false;
- (c) if, after it was made, a document or other piece of evidence has been discovered which would have had a decisive influence on the award and which was withheld through the act of the other party.

4. A case mentioned in sub-paragraph (c), (d) or (f) of paragraph 2 shall be deemed not to constitute a ground upon which an award may be set aside, where the party availing himself of it had knowledge thereof during the arbitration and did not invoke it in the course of the same.

5. Grounds for the challenge and exclusion of arbitrators provided for under articles 121 and 123 shall not constitute grounds upon which the award may be set aside within the meaning of paragraph 2(f) of this article, even when they become known only after such award is made.

6. Subject to the rules enunciated in this article, an error of law contained in the award shall not be a ground upon which the Court may set aside such award.

Article 135

If there are grounds for setting aside any part of an award, that part shall be set aside only if it can be separated from the other parts of the award.

Article 136

1. The grounds upon which an arbitral award may be set aside shall, on pain of being barred, be put forward by the party concerned at one and the same time; subject, however, to the case of paragraph 3(c) of article 134 in respect of the suppression of a ground which came to the notice of the other party subsequently.

2. An application to set aside an award shall be admissible only where the award may no longer be contested before arbitrators.

Article 137

1. An application to set aside an award, based on one of the grounds under paragraph 2(c) to (j), of article 134 shall, on pain of being barred, be made within a period of three months from the date on which notice of the registration of such award has duly been served on the other party. However, that period shall begin to run only from the date on which the award is no longer capable of attack before arbitrators.

2. The defendant in an application to set aside an award may apply, in the same proceedings, for the award to be set aside, even if the period laid down in paragraph 1 of article 132 has expired.

3. An application to set aside an award, as provided in paragraph 3 of article 134, shall be made within a period of three months either from the date of the discovery of the fraud, document or

other piece of evidence or from the date on which the evidence was declared false or recognised as false, provided that a period of five years from the date on which the award was notified in accordance with paragraph 1 of article 132 has not expired.

4. The Court seized of an application to set aside an award shall examine proprio motu whether the award is contrary to public policy and whether the dispute was capable of settlement by arbitration.

Article 138

1. An arbitral award may be enforced only when it can no longer be contested before arbitrators.

2. An award under an arbitration agreement may be registered by leave of the Supreme Court or a Judge thereof, and enforced in the same manner as a judgement or order to the same effect and, where leave is so given, judgement may be entered in terms of the award.

3. The Court shall refuse the application if the award or its enforcement is contrary to public policy or if the dispute was not capable of settlement by arbitration.

4. A decision refusing the application may be subject to an appeal.

Article 139

1. When an award is registered by leave of the Supreme Court, notice of such registration shall be served upon the other party. The decision may be subject to an appeal within a period of one month from the date on which notice of a registered award has been duly served on the other party.

2. A party exercising this right of appeal who seeks to set aside the award without having previously made his application to this effect shall, on pain of being barred, make his application in the same proceedings and within the period prescribed in paragraph 1 of this article. A party who, while not exercising the right of appeal provided under paragraph 1, seeks to set aside an award shall, on pain of being barred, make his application to this effect within the period prescribed in paragraph 1. Such application, as provided in this paragraph, shall be admissible only if the period prescribed in article 137 has not expired.

3. The provisions of paragraph 2 of this article shall apply to be grounds upon which an award may be set aside, provided under paragraph 3 of article 134, only if such grounds were known at the time of the notification of the registration of the award.

4. Without prejudice to the provisions of paragraph 4 of article 134, a party exercising the right of appeal provided by paragraph 1 of this article, may make an application to set aside the award if there is no valid arbitration agreement, notwithstanding the fact that the period prescribed in article 137 has expired.

5. In the case either of an appeal against the registration of any award or of application to set aside an award, the Court may, at the request of one of the parties, order that the enforcement of the award be stayed.

6. The registration of the award by leave of the Supreme Court shall be without effect in respect of an arbitral award or any part thereof which has been set aside.

Article 140

1. Where, before an arbitral tribunal, a compromise has been entered into between the parties in order to put an end to a dispute of which the tribunal is seized, that compromise may be recorded in an instrument prepared by the arbitral tribunal and signed by the arbitrators as well as by the parties. Subject to the provisions of paragraph 2 of article 132, such instrument may on the application of an interested party, be registered by leave of the Supreme Court and enforced as a judgment of the said court.

2. The Supreme Court may refuse the application if the compromise or its enforcement is contrary to public policy or if the dispute was not capable of settlement by arbitration.

3. The decision of the Supreme Court may be subject to an appeal.

Article 141

1. Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs and fees of the reference and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof shall be paid, and may settle the amount of costs to be paid or any part thereof and may award costs to be paid as between attorney and client, However, an arbitrator who is removed by the Court for misconduct shall not be entitled to receive any remuneration in respect of his services.

2. A term that each party shall bear his own costs shall be void if the arbitration agreement is made before the dispute has arisen. If such agreement containing such term is made after the dispute has arisen, the arbitrator or arbitrators, as the case may be, shall be bound to give effect to it by making no order for costs.

3. An award as to costs and fees shall only be attacked before the Supreme Court or a Judge thereof if the aggrieved party can produce prima facie evidence that such award is manifestly excessive.

Article 142

Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator may, if he thinks fit, make an interim award. Any reference in Title IX of Book I of this Code to an award shall include a reference to an interim award. Such an interim award may be registered by leave of the Supreme Court and enforced with the consent of the parties. An arbitral tribunal shall in making a final award, be entitled to take into account an unreasonable refusal to consent to the registration and enforcement of such an interim award which leads to any increase of the loss suffered by a party.

Article 143

1. Unless a contrary intention is expressed therein every arbitration agreement shall, where such

a provision is applicable to the reference, be deemed to contain a provision authorising the arbitrators to conduct such an investigation, examine witnesses on oath or affirmation, obtain the examination of witnesses by affidavit, order the production of documents within their possession or power respectively as may be required or called for, and do all other things which, during the proceedings of the reference, the arbitrators may require.

2. In respect of such powers of investigation, the arbitrators shall have such powers as are enjoyed by the Supreme Court, except that where witnesses refuse to be examined or books are unreasonably withheld, it shall be necessary for the arbitrators to obtain witness summonses as provided by the Seychelles Code of Civil Procedure.

Article 144

Generally, any matter arising out of an arbitration agreement, the conduct of the arbitration, the making of an interim or final award and the execution thereof, which are not dealt with in this Code, shall be left to the discretion of the Court upon the application of an interested party.

Article 145

Unless a contrary intention is expressed in the arbitration agreement, the arbitrator shall have power to correct in an award any clerical mistake or error arising from an accidental slip or omission.

Article 146

On the basis of reciprocity, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, and the arbitral award within the meaning of the said Convention shall be binding. Such Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than Seychelles and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in Seychelles.

Article 147

1. Recognition under the said Convention shall extend to an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term 'agreement in writing' shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The Supreme Court of Seychelles, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

4. At the request of a party to an arbitration agreement, or of any person claiming through or under him, the Court shall make an order to stay any proceedings already commenced before such Court and such other order as it thinks fit in the circumstances, subject to the rules which permit

the Court to refuse to enforce an award under the Convention under article 150 of this Code.

Article 148

Arbitral awards under the said Convention shall be recognised as binding and shall be enforced in accordance with the rules of procedure in force in Seychelles. The conditions or fees or charges on the recognition or enforcement of arbitral awards to which the said Convention applies shall not be more onerous than those required for the recognition or enforcement of domestic arbitral awards.

Article 149

The party seeking to enforce an arbitral award under the Convention must provide :

- (a) the duly authenticated original award or a duly certified copy thereof; and
- (b) the original arbitration agreement or a duly certified copy thereof; and
- (c) where the award or agreement is in a foreign language, a translation thereof carried by an official or by a sworn translator or by a diplomatic or consular agent.

Article 150

1. Enforcement of an arbitral award shall be refused if the person against whom it is invoked proves :

- (a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity; or
- (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (c) that he was not given proper notice of the appointment of the arbitrator or the arbitration proceedings or was otherwise unable to present his case; or
- (d) (subject to paragraph 3 of this article) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration; or
- (e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, with the law of the country where the arbitration took place; or
- (f) that the award has not yet become binding on the parties, or has been set aside or suspended by an authority duly exercising jurisdiction in the country in which, or under the law of which, it was made.

2. Enforcement of an arbitral award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.
3. An arbitral award which contains decisions on matters not submitted to arbitration may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.
4. Where an application to set aside or suspend an award has been made to such an authority duly exercising jurisdiction as is mentioned in paragraph 1 (f) of this article, the Court before which enforcement of the award is sought may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security.

Article 151-189

Repealed.

Commercial Code Act. Fourth Schedule.

BOOK II - COMMERCE BY SEA

TITLE I - MARITIME AND SHIPPING LAW

Article 190

Maritime or shipping matters or disputes and matters incidental thereof and connected therewith shall be subject to such laws and Acts in Seychelles as are in force from time to time.

Articles 191-436

Repealed.

Commercial Code Act. Fourth Schedule.

BOOK III - BANKRUPTCY AND RELATED OFFENCES

Articles 437-614

Repealed.

Commercial Code Act. Fourth Schedule.

BOOK IV - COMMERCIAL JURISDICTION

Article 615-648

Repealed.

Commercial Code Act. Fourth Schedule.